RAILROADS – SINGLE SALES FACTOR APPORTIONMENT SPECIAL REGULATION 4A

The following special regulations are established in respect to railroads.

- 1) **Single Sales Factor Apportionment.** For tax years beginning on or after January 1, 2009, a taxpayer must allocate its nonbusiness income pursuant to §39-22-303.5(5), C.R.S. and regulations thereunder and apportion its business income using the sales factor set forth in this regulation. A taxpayer cannot use this single sales factor apportionment methodology for tax years beginning before January 1, 2009.
 - a) In General. Where a railroad has income from sources both within and without this state, the amount of business income from sources within this state shall be determined pursuant to this regulation. In such cases, the first step is to determine what portion of the railroad's income constitutes "business" income and which portion constitutes "nonbusiness" income under regulation 39-22-303.5.1A. Nonbusiness income is directly allocable to specific states pursuant to §39-22-303.5(5), C.R.S. and regulations thereunder. Business income is apportioned among the states in which the business is conducted pursuant to the apportionment factor set forth in this regulation. The sum of (1) the items of nonbusiness income directly allocated to this state, plus (2) the amount of business income attributable to this state, constitutes the amount of the taxpayer's entire net income which is subject to tax by this state.
 - b) **Business and Nonbusiness Income**. For definitions, rules and examples for determining business and nonbusiness income, see Regulation 39-22-303.5.1A
 - c) Apportionment of Business Income.
 - i) The Sales Factor.
 - (1) In General. The sales factor is a fraction, the numerator of which is the sales of the taxpayer in this state during the taxable year and the denominator of which is the sales of the taxpayer within and without this state during the taxable year. All revenue derived from transactions and activities in the regular course of the trade or business of the taxpayer that produces business income, except per diem and mileage charges that are collected by the taxpayer, is included in the denominator of the sales factor.

The numerator of the sales factor is the total revenue of the taxpayer in this state during the income year. The total revenue of the taxpayer in this state during the income year, other than revenue from hauling freight, passengers, mail, and express, shall be attributable to this state in accordance with §39-22-303.5(4) C.R.S. and regulations thereunder.

- (2) Numerator of Sales Factor from Freight, Mail, and Express. The total revenue of the taxpayer in this state during the income year for the numerator of the factor from hauling freight, mail and express shall be attributable to this state as follows:
 - (a) All receipts from shipments which both originate and terminate within this state; and

- (b) That portion of the receipts from each movement or shipment passing through, into, or out of this state is determined by the ratio which the miles traveled by such movement or shipment in this state bears to the total miles traveled by such movement or shipment from point of origin to destination.
- (3) **Numerator of Sales Factor from Passengers**. The numerator of the sales factor shall include:
 - (a) All receipts from the transportation of passengers (including mail and express handled in passenger service) which both originate and terminate with this state; and
 - (b) That portion of the receipts from the transportation of interstate passengers (including mail and express handled in passenger service) determined by the ratio which revenue passenger miles in this state bears to the total everywhere.
- 2) Alternative Methodologies. If the apportionment and allocation provisions of this methodology do not fairly represent the extent of the taxpayer's activities in Colorado, the taxpayer may petition for, or the director may require, with respect to all or any part of the taxpayer's business activities, if reasonable, alternative methodologies as set forth in §39-22-303.5(7)(B), C.R.S.